

**BEFORE THE CHIEF SPECIAL  
MASTER, IN AND FOR THE  
CITY OF MIAMI BEACH, FLORIDA**

**ORDER AMENDING PROCEDURE BEFORE CITY SPECIAL MASTERS**

IT IS HEREBY ORDERED: The following rules and procedures are hereby adopted and established for all Special Master proceedings.

**General Procedures before Special Masters**

1. **Motions:** Any request or application to the Special Master for an order must be made in writing, by motion or by letter, at least two (2) working days prior to the hearing, unless made during a hearing. Such motion or letter shall be delivered to the Clerk of the Special Master and shall state with specificity the relief sought and the reasons in support of the request. A copy of said motion shall be simultaneously delivered to the City Attorney.
2. **Captions:** Every motion, order or other paper shall have a caption containing the name of the Special Master, the case number, the violation number, the property owner, the violator, the inspector, and a designation identifying the party filing it, and clearly specifying its nature in the title.
3. **Parties/Violators:** All persons moving for a hearing before the Special Master shall provide in their notice and/or Motion their phone number, fax number, if they have one, the address for mailing any pleading, motion, notice or order, and the capacity or relationship of the person signing on behalf of the violator or property owner.
4. **Subpoenas:**
  - a. Every subpoena for testimony before the Special Master shall be issued by the Clerk of the Special Master, under the seal of the City. When requested, the subpoena shall state the Special Master before whom the party or witness is to appear, the title of the action, and shall command each person to whom it is directed to attend and give testimony at the hearing of the Special Master pursuant to Section 162.08(2) Fla. Stat. A subpoena may also command the person to whom it is directed to produce the evidence designated in the subpoena at the hearing before the Special Master pursuant to Section 162.08(3) Fla. Stat.
  - b. A subpoena may be served by any person authorized by law to serve process, or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized to do so.
5. **Amendments:** A party may amend a pleading, motion, citation, or notice of violation once, as a matter of course, at any time up to 10 days prior to the hearing before the Special Master. Otherwise, a party may only amend the listed document with leave of the Special Master, a copy of which must be

sent to the opposing party. All amendments shall relate back to the date of the original pleading, motion, citation, or notice of violation.

6. **Motions for Rehearing: Amendment of Orders**

- a. Time for Motion. A Motion for Rehearing or to Amend shall be served not later than 30 days after the entry of the Order to which it is directed. A timely motion may be amended to state new grounds, in the discretion of the Special Master, at any time before the motion is determined. Order on Petitions for Mitigation are not subject to rehearing.
- b. Orders. An Order granting rehearing must specify the reasons for the rehearing.

7. **Motions for Relief from Order:**

- a. Grounds. (1) That the order is void as a matter of law; or (2) the order was based upon a prior decision of a Court or Special Master which has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application; (3) mistake, inadvertence, surprise, or excusable neglect; (4) newly discovered evidence which could not have been discovered by due diligence in time to move for a rehearing; (5) fraud, or other misconduct by the City Inspector or City Attorney.
- b. Time for Motion. The Motion for Relief from Order shall be made within a reasonable time, and for reasons (3), (4), and (5) not more than one (1) year after the entry of the order or proceeding. A motion under this rule does not affect the finality of an order or suspend its operation.

8. **Special Master Cases on Remand:** Special Master cases, on remand from appellate proceedings, will return for any further action to the original sitting Special Master on the case, unless that Special Master has retired, is ill, or otherwise totally unavailable. In such circumstance, the case will be remanded to the Chief Special Master for any further proceedings.

**Procedure before Special Master on Mitigation Requests**

1. A mitigation request must be made in writing. This may be in the form of a letter, or a Petition for Mitigation.
2. Mitigation may be sought as to each order within a case which imposes a fine. Mitigation may also be sought for an order which increases the original fine (the subject matter of the mitigation in this instance may be only as to the increase and not as to the original fine).
3. No mitigation will be considered until an affidavit of compliance has been filed in the applicable case. However, a mitigation request may be filed with the Clerk of the Special Master prior to the filing of an affidavit of compliance, provided the violator/property owner files an affidavit detailing his/her/its efforts to attain compliance.
4. A mitigation request shall be brought within a reasonable period of time after the factors which constitute the ground(s) for mitigation have or should have been discovered. In any event, no mitigation request may be filed after three (3) years from the date of the filing of the Affidavit of

Compliance with the Clerk of the Special Master.

5. The Special Master does not usually have jurisdiction to consider an untimely mitigation request. Under exceptional circumstances, when the issue of mitigation has not been decided on the merits, the Chief Special Master may grant a mitigation hearing. Once all rights of appeal or mitigation have been lost by a violator/property owner, any reduction or settlement of an existing lien shall be addressed with the City Manager or his designee.
6. Mitigation shall not be used for purposes of rehearing the entire case or appeal of the original order imposing the fine. Mitigation cannot be used as a substitution for an appeal.
7. Transfer of ownership after recordation of the City's lien shall not be considered as a factor in mitigation; nor shall a lapse of time before seeking enforcement, other than the statute of limitations to enforce a judgment be considered.
8. If the mitigation request is based upon the actual cost of repairs to the property to correct the violation(s), written documentation must be submitted to support this contention.
9. If the mitigation request is based upon financial inability, written documentation must be submitted to support this contention. Such information should include the bank account statements of at least six (6) months, federal income tax returns for the last three (3) years, and W-2 statements, or other financial affidavit.
10. The Special Master may also consider whether the lien amount exceeds the equity in the subject property. Written documentation must be submitted to support this contention, which should include either a current appraisal, Miami-Dade County Property Appraiser's latest valuation for tax purposes.
11. The Petitioner's past conduct with regard to compliance or non-compliance with notices of violation, and payment of City licensing or permit fees may be taken into consideration for the granting or denial of mitigation by the Special Master. Repeat violations by the same owner and/or property manager should be considered regardless of whether it is on the same property.
12. The Petition for Mitigation must present a clear and convincing case for Mitigation, which is determined by the Special Master; otherwise, it shall be denied. The Petitioner must present clear and convincing evidence to support their burden of proof of mitigating factors.
13. In the event that the Special Master grants Mitigation, he/she shall prepare an Order reflecting it.

DONE AND ORDERED this 15<sup>th</sup> day of January, 2010, *nunc pro tunc* September 21, 2000.



ABRAHAM LAESER  
Chief Special Master